IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 199 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SURESH H RAJPUT

Versus

JAGDISH CHEVDA & DRY FRUIT MART

Appearance:

1. Criminal Appeal No. 199 of 1991

(MR GN DESAI) for Petitioner No. 1

MR PRANAV G DESAI for the appellant

..... for Respondent No. 1-4

Mr. N.D. Gohil, APP or Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 28/08/2002

ORAL JUDGEMENT

1. In this appeal under Section 378 of the Code of

Criminal Procedure, the appellant, Food Inspector of Vadodara Municipal Corporation, has challenged judgment and order dated September 30, 1989 passed by the learned Judicial Magistrate, First Class, Vadodara, in Criminal Case No.6326 of 1985, by which, the respondents came to be acquitted from the charge framed against them for the offences punishable under Sections 2(1)(a), 7(2)(g) and 16(a)(1) of the Prevention of the Food Adulteration Act, 1954 ('Act' for short).

2. The prosecution case, in short, be summarized as under: The appellant is the Food Inspector appointed under the notification issued by the State Government for the municipal area of Vadodara Municipal Corporation. On September 17, 1985, at around 1.30 p.m. the appellant, along with his staff, had gone to the area called 'Jubilee Baug' at Vadodara, and visited the shop of M/s. Sri Jagdish Chavada & Dry-fruit Mart. At that time, one Virendra Dhirajlal Kandoi, respondent No.3, was in-charge of the said shop. Two independent persons were called and, in their presence, the appellant purchased samples of cashew-nut cake. The appellant purchased 600 grams of cashew-nut cake from 12 packets. The said quantity of cashew-nut cake was divided into three parts and filled in three glass bottles which were clean and dry. The said bottles were sealed in presence of independent panchas. One sample of sealed bottle containing the sample of cashew-nut cake was sent to the public analyst for finding out the contents of the said food article. The report of the public analyst revealed that the said food article did not conform to the standard prescribed under the Food Adulteration Rules, 1955 ('Rules' for short). The appellant had sent a copy of the report of the public analyst to the respondents as prescribed under Section 13(2) of the Act. After following the usual procedure prescribed under the Act, and, after obtaining the consent of the Competent Authority, the appellant filed a complaint in the Court of the learned Judicial Magistrate, First Class, Vadodara, against the respondents, for the offences as stated above. The said complaint was registered as Criminal Case No.6326 of 1985 in the Court of the learned Judicial Magistrate, First Class, Vadodara. The appellant was examined at Exh.22 to prove the case against the respondents. After examining the appellant and on production of various documents by the appellant during his examination-in-chief, charge was framed against the respondents for the abovementioned offences. The charge was read over and explained to the respondents wherein they had pleaded not guilty and claimed to be tried. The respondents were offered opportunity to cross examine the complainant-appellant.

After the prosecution evidence was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure.

3. The learned Magistrate, on appreciation of oral and documentary evidence, concluded that (i) it was not proved that the appellant was appointed as Food Inspector as per Section 9 of the Act read with Rule 8 of the Rules; (ii) it was not proved that the Local Health Authority had given valid sanction under Section 20(1) of the Act for lodging prosecution against the respondents; (iii) it was not proved that the report of the public analyst at Exh.37 was as per Rule 32 of the Rules; and (iv) the prosecution has failed to prove that the report of the public analyst was duly served by the Local Health Authority on the respondents as per the provision of section 13(2) of the Act. On the basis of the abovereferred to conclusion, the learned Magistrate acquitted the respondents from the charge framed against them, which has given rise to filing of this appeal by the appellant-Food Inspector.

4. Learned counsel, Mr. Pranav Desai, who appears for the appellant, and learned Additional Public Prosecutor, Mr. N.D. Gohil, have taken me through the entire record and proceedings produced at the trial.

5. Learned counsel for the appellant has submitted that, when the appellant was duly appointed by the State Government under the notification issued under the provisions of the Act and the Rules, and when he had performed the duty of collecting the samples from the shop of the respondents, it was not open to the learned Magistrate to hold that he had no requisite qualification or training, or he was not competent to take the samples. What is material is whether the Food Inspector had taken the samples in accordance with the provisions of the Act and the Rules made thereunder. It is further submitted that, in case the Court finds that if the Food Inspector had committed any contravention, what would be its effect on the prosecution is a matter to be considered, but his qualifications cannot be looked into. The learned counsel for the appellant has placed reliance on the judgment of the Apex Court in the case of Suresh H. Rajpur & others vs. Bhartiben Pravinbhai Soni & others, reported in (1996) 7 Supreme Court Cases p.199. The learned counsel for the appellant has then contended that when the Local Health Authority, after going through the report of the public analyst and other relevant material, had granted consent to launch prosecution, it cannot be held that the same was invalid. It has been contended

that, at the stage of granting consent to launch prosecution, the sanctioning authority is not required to weigh pros and cons and then to find whether the case would end in conviction or acquittal. The decision in the case of Suresh H. Rajpur (supra) has been pressed into service in support of the above submission. The learned counsel for the appellant has also contended that the Food Inspector had followed all the mandatory provisions at the time of collecting the samples and sending the same to the public analyst and the report of the public analyst was in conformity with the Act and the Rules. It has been contended that the report of the public analyst was duly served on all the respondents by registered post AD and the acknowledgment receipts were duly produced in the Court. At the end, it is submitted by the learned counsel for the appellant that the judgment and order of the acquittal of the trial court is contrary to the evidence and legal provisions and, therefore, the appeal be allowed and the respondents be convicted for the offences under the Act and the Rules. Learned Additional Public Prosecutor, Mr. N.D. Gohil, appearing for the State, has fully supported the submissions of the learned counsel for the appellant. The respondents are duly served, but, they have not appeared personally nor they have engaged any advocate.

6. In view of the decision of the Apex Court in the case of Suresh H. Rajpur (supra), the finding of the learned Magistrate that the Food Inspector was not legally appointed under the Act, deserves to be quashed and set aside. The material produced by the prosecution establishes beyond doubt that the appellant was duly appointed to work as Food Inspector in the municipal area of Vadodara Municipal Corporation and he was having all the requisite qualification and experience.

7. The finding of the learned Magistrate that there was no valid sanction for prosecution, also deserves to be quashed and set aside. The sanction for prosecution produced at Exh.39 is a valid consent accorded by the Local Health Authority under Section 20(1) of the Act. At the stage of according sanction or consent, the Competent Authority is not required to weigh pros and cons and then to find whether the case would end in conviction or acquittal. The report of the public analyst and the documents produced by the appellant before the Competent Authority, prima facie, establish that it was a fit case to launch the prosecution against the respondents for the alleged breach of the Act and the Rules. In view of the ratio laid down by the Apex Court in the case of Suresh H. Rajpur (supra), it should be

held that Exh.39, which was an order of according consent to launch the prosecution, is valid consent and, hence, the finding of the learned Magistrate that there was no valid sanction for prosecution deserves to be quashed and set aside.

8. Before entering into the discussion on other findings recorded by the learned Magistrate for acquitting the respondents, it would be worthwhile to consider the ground, on which the acquittal of the respondents is recorded, that, as per Section 13(2), copy of the report of the public analyst was not served to all the respondents-accused. In this connection, it is submitted by the learned counsel for the appellant that the registered AD slips produced by the prosecution had established that copy of the report of the public analyst was duly served on all the respondents and, therefore, it should be held that the requirement under Section 13(2) is duly complied with. In my opinion, the submission of the learned counsel for the appellant deserves to be rejected. The learned Magistrate had, in detail, discussed that the acknowledgment receipts produced by the prosecution did not prove beyond doubt that the copy of the report of the public analyst was served on each of the respondents. Even the complainant-appellant, in cross examination, had admitted that he cannot say whether all the respondents had signed the acknowledgment receipt or not. The evidence of the appellant did not establish beyond doubt that all the respondents had received the report of the public analyst. The evidence led by the prosecution, in my view, did not prove beyond doubt that there was compliance of the mandatory provision of Section 13(2) of the Act. Non-compliance of the mandatory provision of Section 13(2), in my view, has resulted in deprivation of the valuable right given to the respondents of applying before the Court to send the food article for analysis to the Central Food Laboratory. As there was breach of mandatory provision of Rule 13(2) of the Rules, in my view, the prosecution case is liable to fail.

9. As a result of foregoing discussion, the appeal fails and is dismissed. The order of acquittal dated September 30, 1989 passed by the learned Judicial Magistrate, First Class, Vadodara, in Criminal Case No.6326 of 1985, is confirmed.

(M.H.Kadri, J.)

(swamy)